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# Appeal Decision

Site visit made on 18 January 2022

**by C Coyne BA (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 27/04/2022**

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## **Appeal Ref: APP/H0928/W/21/3283939 Shed at Yanwath Hall, Penrith CA10 2LF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for approval required under Article 3(1) and Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO).
  - The appeal is made by Lowther Estate Trust against the decision of Eden District Council.
  - The application Ref 21/0687, is dated 22 July 2021.
  - The development proposed is conversion including partial demolition of an agricultural building at Yanwath Hall to create four dwellinghouses (Use Class C3) including the reuse of the existing concrete foundation, the retention of the steel frame including the roof structure, the block walls to both elevations, with the replacement of the external timber cladding to the walls and the replacement of the existing roof covering, with new materials to match/complement as existing in design and appearance.
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### **Decision**

1. The appeal is allowed and prior approval is deemed to be granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for conversion including partial demolition of an agricultural building at Yanwath Hall to create four dwellinghouses (Use Class C3) including the reuse of the existing concrete foundation, the retention of the steel frame including the roof structure, the block walls to both elevations, with the replacement of the external timber cladding to the walls and the replacement of the existing roof covering, with new materials to match/complement as existing in design and appearance at Shed at Yanwath Hall, Penrith CA10 2LF in accordance with the application 21/0687 made on 22 July 2021, and the details submitted with it including: As Existing Location + Block Plan Drawing no. 120-121-01 B; As Proposed Block Plan Drawing no. 120-121-07; As Proposed Floor Plan Drawing no. 120-121-08; As Proposed Elevations Drawing no. 120-121-09; As Proposed External Wall Detail Drawing NO. 120-121-SK4; As Proposed Roof/Ceiling Detail Drawing no. 120-121-SK5; As Proposed Floor Detail Drawing No. 120-121-SK6.

### **Preliminary Matters**

2. Class Q of Schedule 2, Part 3 of the Town & Country Planning (General Permitted Development) (England) Order 2015 (GPDO) permits the change of use of a building from use as an agricultural building to use as a dwelling together with building operations reasonably necessary to convert the building

to a dwelling. Paragraph Q.1 of the GPDO sets out circumstances when development is not permitted, and paragraph Q.2 lists a number of conditions including that before beginning the development an application must be made to the local planning authority for a determination as to whether prior approval will be required relating to a number of matters.

3. Although the Council acknowledges that it failed to make a determination on the application within the prescribed period, it nevertheless considers that the proposed development is not permitted development due to concerns regarding the alterations proposed to the building. The appellant contests this position stating that the works proposed are reasonably necessary to convert the building into four dwellings. However, although there is a dispute between the parties regarding whether the proposal is permitted development, as this appeal relates to the Council's failure to make a determination on the prior approval application, whether or not the proposal is permitted development is not a matter for me to consider when determining this appeal which solely relates to the prior approval process.

### **Main Issue**

4. Having regard to the relevant requirements of Class Q and paragraph W of the GPDO, the main issue is whether prior approval is deemed to be granted.

### **Reasons**

5. Part 11, paragraph W of the GPDO states that development must not begin before the occurrence of one of the listed events, one of which is the expiry of 56 days from the date of receipt of the application by the local planning authority without it notifying the applicant as to whether prior approval is given or refused.
6. As stated, the Council acknowledges that it failed to notify the appellant as to whether prior approval was given or refused within 56 days of it receiving the application and that such failure means that it is not now able to require prior approval for the matters listed in paragraph Q.2(1).
7. Under the circumstances and having regard to Part 11, paragraph W of the GPDO, the Council's acknowledged failure to determine the application means that prior approval is deemed to be granted. However, notwithstanding this and as stated above, the development could only lawfully proceed if it is in accordance with the submitted plans and is in fact permitted development having regard to the relevant conditions and limitations imposed on the planning permission granted by the GPDO. The nature of the appeal means that this is not a matter to be considered by me in the determination of this appeal.

### **Conclusion**

8. For the above reasons and having regard to all matters raised, I conclude that the failure of the Council to make a determination on the application within the prescribed period means that prior approval is deemed to be granted.

*C Coyne*

INSPECTOR